

**Remarks**

Claims 1-6, 8-10 and 14-21 are pending in the application (Applicants point out that the Office Action incorrectly states that claims 1-6 and 8-21 are pending). Claim 1 is amended to replace the text description of the group  $R^2$  with the corresponding structural moiety. Claim 19 is amended to expressly recite that the group  $R^4$  is independently selected from the specified groups. No new matter is added, support being found for example in the claims as originally filed and in the Examples.

Applicants reserve the right to pursue any nonelected subject matter in a divisional application.

**Office Action:**

On page 2 of the Office Action, the Examiner states that the application is in condition for allowance except for the following formal matters: applicants did not delete non-elected invention from the claims. The amendment filed 11/17/2008 is deemed to not overcome the formal matter raised in prior Ex parte Quayle Action.

In particular, the Examiner states that the definitions of  $R^2$  and  $Y^2$  would raise second paragraph issues and also does not limit the invention of Group III to  $R^2 =$  pyrido[3,2-b]thiazine ring. The definition of  $R^2$  as set forth in the restriction requirement is said by the Examiner to point out the exact chemical structure of the pyrido[3,2-b]thiazine ring at page 18 of the specification. The Examiner posits that Applicants are simply trying to rewrite the definition of Group III and  $R^2$  instead of replacing the structure of  $R^2$  to pyrido[3,2-b]thiazine ring from the specification, and that by doing this, applicants did not limit the definition of  $R^2$  to pyrido[3,2-b]thiazine or delete non-elected subject matter from the claims.

On page 3 of the Office Action, the Examiner advises that the objection can be overcome by replacing the definition of  $R^2$  with the chemical structure disclosed at page 18 of the specification (shown on page 3 of the Office Action).

Applicants respectfully traverse the objection.

Preliminarily, Applicants thank the Examiner for a telephonic interview on February 11, 2009, during which the undersigned confirmed with the Examiner that the elected pyrido[3,2-b]thiazine ring could be optionally substituted as supported by the

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original claims and specification (e.g., the carbon atoms of the ring may have substituents R<sup>4</sup> and R<sup>5</sup>).

Contrary to the Examiner's position, the definition of R<sup>2</sup> as previously amended defines a pyrido[3,2-b]thiazine ring as shown on page 18 of the specification, which ring may be optionally substituted as supported by the original claims and specification. This can be readily seen by those skilled in the art by looking at the complete definition of R<sup>2</sup> as previously amended. Furthermore, while the Examiner posits that the definition would "raise second paragraph issues", he does not set forth any particular "second paragraph issues" and thus fails to meet the Office's burden of establishing any "second paragraph issues".

Notwithstanding the above traversal, Applicants have amended claim 1 to replace the text description of the group R<sup>2</sup> with the corresponding structural moiety.

The application is believed to be in condition for allowance. If any issues remain to be resolved, the Examiner is invited to contact the undersigned at the telephone number shown below.

Respectfully submitted,

  
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